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IN THE

Supreme Court of the United States

October Term, 1966
No. 797

SOUTHERN PACIFIC COMPANY, a corporation,

Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation, J. C. MONNING, General Manager of the Building and Safety Department of the City of Los Angeles; LYALL A. PARDEE, City Engineer of the City of Los Angeles; and DOE I through DOE XX, inclusive,

Appellees.

On Appeal From the District Court of Appeal of the State of California.

MOTION TO DISMISS.

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vs.

CITY OF LOS ANGELES, a Municipal Corporation, J. C. MONNING, General Manager of the Building and Safety Department of the City of Los Angeles; LYALL A. PARDEE, City Engineer of the City of Los Angeles; and DOE I through DOE XX, inclusive,

Appellees.

On Appeal From the District Court of Appeal of the State of California.

MOTION TO DISMISS.

The Appellees City of Los Angeles, a municipal corporation, J. C. Monning, its Superintendent of Building, and Lyall A. Pardee, its City Engineer, hereby move to dismiss the appeal heretofore filed with this Honorable Court by Southern Pacific Company. Such motion is based upon the following grounds:

1. The judgment appealed from rests upon an adequate non-federal basis.

2. The appeal does not present a substantial federal question.

Appellant in its Statement of the Case contained within its Jurisdictional Statement omits mention of some of the key evidence and findings relied on by the lower courts while reiterating some of its own factual contentions made in and rejected by those courts. (Jurisdictional Statement, pp. 5-6.) It thus becomes necessary to more fully set forth the facts involved herein before we can properly discuss and elaborate upon each of our above mentioned grounds in support of our Motion to Dismiss.

Statement of Facts.

The facts involved in this case have heretofore been set forth by the California District Court of Appeal in its opinion (*Southern Pacific Company v. City of Los Angeles, et al.*, 242 A.C.A 21, 51 Cal. Rptr. 197; appellant's Jurisdictional Statement, Appendix "A") and by the trial court in its Memorandum Decision. [C. T. pp. 236-261; appellant's Jurisdictional Statement, Appendix "C".] The facts hereinafter set forth, unless otherwise noted, are recited within the opinion of the District Court of Appeal.

Appellant is the owner of some 50 acres of land in the industrial section of the City of Los Angeles bounded on its westerly side by Alameda Street, a major highway which is substandard in width where it adjoins appellant's property. In 1963 appellant desired to construct a warehouse occupying approximately 3½ acres of land and a total floor area of some 5 acres on a portion of such land after first relocating onto the southerly portion of such property its existing open lot "team track" operation involving some 2200 freight car deliveries and some 4400 truck loadings per year. [R. T. p. 37, line 12, to p. 39, line 6.] The proposed warehouse

could be utilized by some 20 railroad cars at a single time and had a capability of loading and unloading 48 trucks at one time. As the District Court of Appeal pointed out such warehouse "could be operated, if desired, by tenants on a 24-hour basis. If so used, more than 1,000 trucks would be utilized each day." (Jurisdictional Statement, Appendix "A", p. 13.)

When appellant in 1963 sought a building permit for such warehouse, such permit was refused by the City pursuant to Section 12.37 of the Los Angeles Municipal Code until such time as appellant dedicated (or the city otherwise acquired) the westerly 10 feet of its property for a distance of 850 feet along Alameda Street (approximately 1/5 of an acre) for public street purposes so as to bring the adjacent half of such highway up to its master planned width. It was subsequently agreed that such permit might issue and such construction proceed, with the required dedication to await the outcome of this lawsuit. (Jurisdictional Statement, p. 4.)

Section 12.37 of the Los Angeles Municipal Code as it read when this law suit was instituted in 1964 is set forth in the Clerk's Transcript, pages 29-37, and in Appendix "B" to the Jurisdictional Statement herein. Such section provides in essence that, with certain limited exceptions, no building or structure shall be erected or enlarged upon any lot in an R3 or less restrictive (multiple dwelling, commercial or manufacturing) zone abutting upon a major or secondary highway, unless the half of the highway located adjacent to such lot has been dedicated and improved to its master planned width. Then follow certain limitations upon and exceptions to such restriction so as to permit the

lesser use of such lands and a procedure by which a variance from the restrictions of the section can be procured or by which dedication can take place expeditiously if it is desired to put the land to its most *intensive* use and to build *immediately* rather than await the widening of such highway by some other means. Such provision is part of the Comprehensive Zoning Plan of the City of Los Angeles.

The District Court of Appeal in upholding the validity of Section 12.37 specifically recognized and commented upon the fact that the recent explosive population and industrial growth of the City of Los Angeles has been accompanied by an even *greater* proportionate increase in vehicles used and in highway deficiencies and congestion; that the progress of traffic is always slowed by the entry of trucks (such as would be generated by appellant's operation) into the traffic flow; that the widening of the substandard highway adjacent to appellant's property will not only benefit the overall traffic flow, but will benefit appellant's own operations and land value through increased accessibility. (Jurisdictional Statement, Appendix "A", pp. 12-14.)

Upon the completion of the trial of this matter the trial judge prepared an extremely thorough Memorandum of Decision (Jurisdictional Statement, Appendix "C") setting forth clear and sound answers to the many points raised by appellant in this law suit and specifically found and determined, amongst other things, that:

(a) Section 12.37 is part of the Comprehensive Zoning Plan and its limitations upon the use and development of land are comparable with other regulations within such plan. [C. T. p. 38, lines 5-9.]

(b) the city's extensive population growth has necessitated and made essential the planned and controlled use and development of land within the city including a master plan for highway development. [C. T. p. 38, lines 12-25.]

(c) the existing street system within the city is materially deficient and inadequate and such deficiency is increasing at an increasing rate due to the population explosion and increased motor vehicle registration and building construction. [C. T. p. 38, lines 28-32.]

(d) Section 12.37 is reasonably related to and necessary to effectuate the city's master plan of highways. [C. T. p. 39, lines 3-5.]

(e) the provisions of Section 12.37 benefit both the affected property and the general public. [C. T. p. 39, lines 5-8.]

(f) the construction of high density use buildings directly and materially affects the city's traffic and transportation facilities. [C. T. p. 39, lines 9-13.]

(g) the conditions imposed upon intensive land use and development by Section 12.37 are neither arbitrary nor unreasonable, are within the police power and "are matters upon which reasonable minds might differ." [C. T. p. 40, lines 2-9.]

(h) Section 12.37 does not deprive appellant or others of the entire use or economic benefit of their property [C. T. p. 40, lines 12-15], contains reasonable, not arbitrary, classifications [C. T. p. 40, lines 18-23], and provides adequate standards to guide the administration and enforcement thereof. [C. T. p. 40, lines 26-28.]

(i) appellant's warehouse will generate increased truck traffic on Alameda Street and will further congest traffic thereon by the addition of railroad lines to serve same. [C. T. p. 42, lines 2-5.]

(j) the dedication required of appellant as a condition to its immediate construction of its warehouse will not cause it undue hardship or financial loss. [C. T. p. 42, lines 12-14.]

With the foregoing facts and the actual findings and determinations of the lower courts in mind, let us now proceed to a consideration of the necessity for review by this Honorable Court.

I.

The Judgment Appealed From Rests Upon an Adequate Non-Federal Basis.

The well-settled law in this country is that the validity of legislation must be determined by the application to the facts of the so-called "reasonable minds" test. This was stated by the United States Supreme Court in the early and leading zoning case of *Euclid v. Ambler Realty Company*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303, at page 388:

> "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

In *Sproles v. Binford*, 286 U.S. 374 (52 S. Ct. 581, 76 L. Ed. 1167), it was stated at page 388 that:

> ". . . debatable questions as to reasonableness are not for the courts but for the legislature."

Similar language was used in *Zahn v. Board of Public Works,* 274 U.S. 325, 328, 47 S. Ct. 594, 71 L. Ed. 1074. This principle has been echoed and followed by state courts throughout the nation in hundreds of zoning decisions since those early declarations, including the California courts. (*Lockard v. City of Los Angeles,* 33 Cal. 2d 453, 461, 202 P. 2d 38, Petition for Writ of Certiorari denied — 337 U.S. 939, 69 S. Ct. 1516, 93 L. Ed. 1744; *Miller v. Board of Public Works,* 195 Cal. 477, 490, 234 Pac. 381, appeal dismissed — 273 U.S. 781, 47 S. Ct. 460, 71 L. Ed. 889; *Consolidated Rock Products Co. v. City of Los Angeles,* 57 Cal. 2d 515, 522, 523, 370 P. 2d 342, appeal dismissed — 371 U.S. 36, 83 S. Ct. 145, 9 L. Ed. 2d 112).

Whether the facts in the present case were such that reasonable minds might differ as to the necessity and propriety and reasonableness of the enactment of Section 12.37 and its application to the subject property was a factual determination which was presented to, thoroughly argued before and specifically considered and ruled upon by the state courts in the instant case and was, we submit, determinative of the case.

Without going into any greater detail than hereinabove set forth as to the extensive evidence presented to the trial court and the findings of fact of the trial court based thereon, showing the necessity for and reasonableness of Section 12.37 (reference is made to pages 35-41 of respondents' Answer to Petition for Hearing in the California Supreme Court for a summation of such evidence), suffice it to say that the trial court specifically found, based upon such evidence, that

> "The conditions placed upon land use and development in R3 and less restrictive zones in the

> City of Los Angeles by Section 12.37 of the Los Angeles Municipal Code bear a substantial relationship to the accomplishment of a proper public purpose within the police power, and are not arbitrary or unreasonable. The means selected by the City's legislative body by the formulation and adoption of Section 12.37 are matters upon which reasonable minds might differ." [C. T. p. 40, lines 2-9.]

Similarly the District Court of Appeal, upon reviewing this matter, declared (Jurisdictional Statement, Appendix "A", p. 12.)

> ". . . the determination below must be sustained if the necessity and propriety of the legislative action is one upon which reasonable minds may differ (citation). Governed by such rule, and upon an examination of the evidence presented, we have no hesitancy in finding that all the relevant circumstances justified the legislation here challenged."

The law is clear that the United States Supreme Court will not take jurisdiction of a matter where the judgment of the state court could be supported upon an adequate non-federal ground. (*Stembridge v. State of Georgia,* 343 U.S. 541, 72 S. Ct. 834, 96 L. Ed. 1130; *Buck v. People of the State of California,* 343 U.S. 99, 72 S. Ct. 502, 96 L. Ed. 775; *Zorach v. Clauson,* 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954; *Hammerstein v. Superior Court of California,* 340 U.S. 622, 71 S. Ct. 521, 95 L. Ed. 586.) It is submitted that the factual determinations of the lower courts herein provide an adequate non-federal ground to support the

judgment of the California District Court of Appeal and that this Honorable Court should therefore refuse jurisdiction of and dismiss this appeal.

II.

The Appeal Does Not Present a Substantial Federal Question.

The determination of this Honorable Court in the case of *Zucht v. King,* 260 U.S. 174 (43 S. Ct. 24, 67 L. Ed. 194) sets forth the law underlying this point in language surprisingly applicable to the facts of this case. In dismissing the writ of error there involved the court at pages 176 and 177 first pointed out how prior decisions had upheld the principles therein being challenged and then concluded:

> "In view of these decisions we find in the record no question as to the validity of the ordinance sufficiently substantial to support the writ of error."

To the same effect see also *Valley Steamship Co. v. Wattawa,* 244 U.S. 202, 37 S. Ct. 523, 61 L. Ed. 1084.

It is submitted that the law is now clear and firmly established that property has not been "taken," as appellant contends herein, by the application of reasonable zoning regulations thereto or by the denial of building permits for a use not in conformity with such zoning. (*Euclid v. Ambler Realty Co., supra; Zahn v. Board of Public Works, supra; Hadacheck v. Sebastian,* 239 U.S. 394, 36 S. Ct. 143, 60 L. Ed. 348.) Likewise it has been held that property has not been "taken" when, as a condition to the approval of a subdivision, dedication is required for street purposes (*Ayres v. City Council of Los Angeles,* 34 Cal. 2d 31, 207 P. 2d 1) or for

park purposes (*Billings Properties, Inc. v. Yellowstone County,* 144 Mont. 25, 394 P. 2d 182) or when, as a condition to the issuance of building permits, proper access (and therefore invariably street dedication) is required. (*Brous v. Smith,* 304 N.Y. 164, 106 N.E. 2d 503.) The propriety and validity of legislation is based upon the "reasonable minds" test. (Point I, above.) If an ordinance is otherwise a valid exercise of the police power, the fact that it deprives property of its most beneficial use does not render it unconstitutional. (*Goldblatt v. Town of Hempstead,* 369 U.S. 590, 592, 82 S. Ct. 987, 8 L. Ed. 2d 130.)

Probably the most far-sighted and comprehensive statement in this entire field was uttered by this court in the landmark case of *Euclid v. Ambler Realty Co., supra,* where the court stated at pages 386 and 387 of 272 U.S.:

> "Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago; probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no

inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the *meaning*, but to the *application* of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.

"The ordinance now under review and all similar laws and regulations must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities."

It is submitted that the above declaration of this court made 40 years ago could as well have been made today. The basic rule for determining the validity of police power enactments was recently reiterated by this court in the case of *Goldblatt v. Town of Hempstead, supra,* wherein it was stated at page 594 of 369 U.S.:

"The classic statement of the rule in *Lawton v. Steele,* 152 U.S. 133, 137, 38 L. Ed. 385, 388, 14 S. Ct. 499 (1894), is still valid today:

'To justify the State in . . . interposing its authority in behalf of the public, it must appear, first, that the interests of the public . . . require

such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.'"

It is submitted that the holdings of the lower courts herein as to the validity of Section 12.37 fall squarely within the guidelines of the *Euclid* and *Goldblatt* cases and, together with the presumption favoring the validity of legislative enactments (*Lawrence v. State Tax Commission,* 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102) fully support such holdings and negate the existence of any remaining substantial federal question.

With respect to appellant's incidental challenge to Section 12.37 based upon alleged lack of uniformity and improper classification and improper delegation of legislative discretion, reference is made to the holdings of the lower courts herein (Jurisdictional Statement, Appendix "A", pp. 14-17; Appendix "C", pp. 51-54) for a full answer to such contentions.

Conclusion.

For each and every of the reasons set forth above it is respectfully submitted that the within appeal to this Honorable Court should be dismissed.

Respectfully submitted,

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